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*Attorneys for Defendants Holcim (US) Inc.
and Ash Grove Cement Company*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CYRUS SPURLINO, an individual,

Plaintiff,

v.

HOLCIM (US) INC., a Delaware corporation,
ASH GROVE CEMENT COMPANY, a
Delaware corporation, and JOHN DOES I-V,

Defendants.

NOTICE OF REMOVAL

Case No. 2:14-cv-00461-PMW

Magistrate Judge Paul M. Warner

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Holcim (US) Inc. and Ash Grove Cement Company (collectively “Defendants”) give notice of removal of this action from the Third Judicial District Court, Salt Lake County, State of Utah to the United States District Court for the District of Utah, Central Division. Defendants submit that original subject matter jurisdiction exists in the United States District Court for the District of Utah based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), and aver the following in support of this Notice of Removal:

1. Although Defendants have not been served with process, Defendants received a copy of the Complaint in this matter on May 23, 2014. A copy of the Complaint is attached hereto as Exhibit A. The Complaint is the only pleading filed in the state court action.

2. Under 28 U.S.C. § 1446(b), the Notice of Removal of a civil action shall be filed within thirty days after the receipt by the defendant, through service, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. Defendants became aware of the Complaint on May 23, 2014, so this Notice of Removal is timely filed within the thirty-day period provided under 28 U.S.C. § 1446(b).

3. This matter is removable because there is diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Diversity jurisdiction exists “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between (1) citizens of different States; . . .” 28 U.S.C. § 1332(a)(1). Plaintiff is a citizen of Pasco County, Florida. (Compl. ¶ 14.) Holcim (US) Inc. is a Delaware corporation with its principal place of business in Waltham, Massachusetts. Ash Grove Cement Company is a Delaware corporation with its principal place of business in Cody Overland Park, Kansas. Accordingly, diversity of citizenship exists in this matter.

4. The amount in controversy exceeds \$75,000. Plaintiff alleged in his Complaint that his claims against Defendants fall within Tier 3 of Rule 26 of the Utah Rules of Civil Procedure. (Compl. ¶ 10.) For an action to be a Tier 3 action, the amount in controversy must be at least \$300,000. Utah R. Civ. P. 26(c)(5). While Defendants dispute the existence and extent of Plaintiff’s damages, if any, the allegations in the Complaint demonstrate that the amount in controversy exceeds the \$75,000 statutory requirement.

6. Based on the foregoing, the United States District Court for the District of Utah, Central Division has jurisdiction over this action under 28 U.S.C. § 1332, and this action may be removed to Federal Court pursuant to 28 U.S.C. § 1441. Pursuant to 28 U.S.C. § 1446(d), Defendants will file a copy of this Notice of Removal with the Third Judicial District Court for the State of Utah at or about the same time that this Notice of Removal is filed. A copy of all removal papers will also be served on counsel for Plaintiff.

Because this Court has jurisdiction under 28 U.S.C. § 1332(a)(1), Defendants respectfully request that this action be removed to this Court.

DATED this 23rd day of June, 2014.

RAY QUINNEY & NEBEKER P.C.

/s/ James S. Jardine
James S. Jardine

*Attorneys for Defendants Holcim (US) Inc. and Ash
Grove Cement Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2014, a true and correct copy of the foregoing **NOTICE OF REMOVAL** was filed with the Clerk of Court using the CM/ECF system and has been forwarded to all counsel of record via:

<input type="checkbox"/> Hand Delivery	Brian C. Johnson
<input checked="" type="checkbox"/> U.S. Mail	H. Burt Ringwood
<input type="checkbox"/> Fax Transmission	R. Roman Groesbeck
<input type="checkbox"/> E-mail Transmission	Brooke Johnson
<input checked="" type="checkbox"/> CM-ECF	STRONG & HANNI
	9350 South 150 East, Suite 820
	Sandy, Utah 84070

/s/ Jeanette Evans

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